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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150413357-5999-02]

RIN 0648-XT003

Atlantic Highly Migratory Species; Commercial Aggregated Large Coastal Shark and Hammerhead Shark Management Group Retention Limit Adjustment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS is adjusting the commercial aggregated large coastal shark (LCS) and hammerhead shark management group retention limit for directed shark limited access permit holders in the Atlantic region from 3 LCS other than sandbar sharks per vessel per trip to 36 LCS other than sandbar sharks per vessel per trip. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments. The retention limit will remain at 36 LCS other than sandbar sharks per vessel per trip in the Atlantic region through the rest of the 2019 fishing season or until NMFS announces via a notice in the **Federal Register** another adjustment to the retention limit or a fishery closure. This retention limit adjustment affects anyone with a directed shark limited access permit fishing for LCS in the Atlantic region.

DATES: This retention limit adjustment is effective on [*insert date of publication in the Federal Register*], through December 31, 2019, or until NMFS announces via a notice in the **Federal Register** another adjustment to the retention limit or a fishery closure, if warranted.

FOR FURTHER INFORMATION CONTACT: Lauren Latchford, Guý DuBeck, or Karyl Brewster-Geisz 301-427-8503; fax 301-713-1917.

SUPPLEMENTARY INFORMATION: Atlantic shark fisheries are managed under the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP), its amendments, and implementing regulations (50 CFR part 635) issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Atlantic shark fisheries have separate regional (Gulf of Mexico and Atlantic) quotas for all management groups except those for blue shark, porbeagle shark, pelagic sharks (other than porbeagle or blue sharks), and the shark research fishery for LCS and sandbar sharks. The boundary between the Gulf of Mexico region and the Atlantic region is defined at § 635.27(b)(1) as a line beginning on the East Coast of Florida at the mainland at 25°20.4' N. lat. proceeding due east. Any water and land to the north and east of that boundary is considered, for the purposes of setting and monitoring quotas, to be within the Atlantic region. This inseason action only affects the aggregated LCS and hammerhead shark management groups in the Atlantic region.

Under § 635.24(a)(8), NMFS may adjust the commercial retention limits in the shark fisheries during the fishing season. Before making any adjustment, NMFS must consider specified regulatory criteria (see § 635.24(a)(8)(i) through (vi)). After considering these criteria as discussed below, NMFS has concluded that increasing the retention limit of the Atlantic

aggregated LCS and hammerhead management groups for directed shark limited access permit holders in the Atlantic region will allow use of available aggregated LCS and hammerhead shark management group quotas and will provide fishermen throughout the region equitable fishing opportunities for the rest of the year. Therefore, NMFS is increasing the commercial Atlantic aggregated LCS and hammerhead shark retention limit in the Atlantic region from 3 to 36 LCS other than sandbar shark per vessel per trip.

NMFS considered the inseason retention limit adjustment criteria listed at § 635.24(a)(8)(i) through (vi), which includes:

- The amount of remaining shark quota in the relevant area, region, or sub-region to date, based on dealer reports.

Based on dealer reports through June 14, 2019, approximately 12 percent, or 19.7 metric tons (mt) dressed weight (dw) (43,409 lb dw) of the 168.9 mt dw shark quota for aggregated LCS and approximately 31 percent, or 8.4 mt dw (18,465 lb dw) of the 27.1 mt dw shark quota for the hammerhead management groups have been harvested in the Atlantic region. This means that approximately 88 percent of the aggregated LCS quota, and approximately 69 percent of the hammerhead shark quota remains available. NMFS took action previously this year to reduce retention rates after considering the relevant inseason adjustment criteria, particularly the need for all regions to have an equitable opportunity to utilize the quota. Given the geographic distribution of the sharks at this time of year (*i.e.*, they are heading north before moving south again later in the year), the retention limit is being adjusted upwards to ensure that fishermen in the Atlantic region have an opportunity to fully utilize the quotas in the region throughout the remainder of the year.

- The catch rates of the relevant shark species/complexes in the region or sub-region, to date, based on dealer reports.

Based on the current commercial retention limit and average catch rate of landings data from dealer reports, the amount of aggregated LCS and hammerhead shark quota available is high. Using current catch rates, projections indicate that landings would not reach 80 percent of the quota before the end of the 2019 fishing season (December 31, 2019). A higher retention limit will better promote fishing opportunities and utilization of available quota in the Atlantic region.

- Estimated date of fishery closure based on when the landings are projected to reach 80 percent of the quota given the realized catch rates.

Once the landings reach 80 percent of either the aggregated LCS or hammerhead shark quotas, NMFS would, as required by the regulations at § 635.28(b)(3), close the aggregated LCS and hammerhead shark management groups since they are “linked quotas.” Current catch rates would likely result in the fisheries remaining open for the remainder of the year, but with the quotas being underutilized in the Atlantic region. The higher retention limit should help make it possible to more fully utilize the quota in the Atlantic region.

- Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments.

Increasing the retention limit on the aggregated LCS and hammerhead management groups in the Atlantic region from 3 to 36 LCS other than sandbar sharks per vessel per trip would allow for fishing opportunities later in the year, consistent with the FMP's objective to ensure equitable fishing opportunities throughout the region.

- Variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species based on scientific and fishery-based knowledge.

The directed shark fisheries in the Atlantic region are composed of a mix of species, with a high abundance of aggregated LCS caught in conjunction with hammerhead sharks. Migratory patterns of many LCS in the Atlantic region indicate that sharks move further north in the summer and then return south in the fall. Increasing the retention limit in the Atlantic region at this time provides fishing opportunities for fishermen further north (*i.e.* Mid-Atlantic and New England) as the sharks are likely going to be in the northern areas of the region for only a short period of time before migrating south again. As a result, by increasing the harvest and landings on a per-trip basis, fishermen throughout the Atlantic region will likely experience equitable fishing opportunities.

- Effects of catch rates in one part of a region or sub-region precluding vessels in another part of that region or sub-region from having a reasonable opportunity to harvest a portion of the relevant quota.

NMFS has previously provided notice to the regulated community (83 FR 60777; November 27, 2018, and 84 FR 12524; April 2, 2019) that a goal of this year's fishery is to ensure fishing opportunities throughout the fishing season and the Atlantic region. While dealer reports indicate that, under current catch rates, the aggregated LCS and hammerhead shark management groups in the Atlantic region would remain open for the remainder of the year, the catch rates also indicate that the quotas would likely not be fully harvested under the current retention limit. If the harvest of these species is increased through an increased retention limit, and absent any unforeseen circumstances or changes to expected catch rates, NMFS estimates

that the fishery is likely to remain open for the remainder of the year and fishermen throughout the Atlantic region would have a reasonable opportunity to harvest a portion of the quota.

On November 27, 2018 (83 FR 60777), NMFS announced in a final rule that the aggregated LCS and hammerhead shark fisheries management groups for the Atlantic region would open on January 1 with a quota of 168.9 mt dw (372,552 lb dw) and 27.1 mt dw (59,736 lb dw), respectively. In the final rule, after considering public comment on the proposed rule (83 FR 45866, September 11, 2018), NMFS explained that if it appeared that the quota is being harvested too quickly, potentially precluding fishing opportunities throughout the entire region (*e.g.*, if approximately 20 percent of the quota is caught at the beginning of the year), NMFS would consider reducing the commercial retention limit to 3 or fewer LCS other than sandbar sharks and later consider increasing the retention limit, perhaps to 36 LCS other than sandbar sharks per vessel per trip, around July 15, 2019, consistent with the applicable regulatory adjustment criteria. Dealer reports through March 22, 2019, indicated that landings had reached 24 percent of the hammerhead shark quota. NMFS then reduced the commercial Atlantic aggregated LCS and hammerhead shark retention limit from 25 to 3 LCS other than sandbar sharks per vessel per trip on April 1, 2019 (84 FR 12524; April 2, 2019) after considering the inseason retention limit adjustment criteria listed in § 635.24(a)(8). Based on dealer reports through June 14, 2019, approximately 12 percent and 31 percent of the aggregated LCS and hammerhead shark quotas have been harvested, respectively. With this action, NMFS is increasing the retention limit for the commercial aggregated LCS and hammerhead shark management groups in the Atlantic region for directed shark limited access permit holders from 3 LCS other than sandbar sharks per vessel per trip to 36 LCS other than sandbar sharks per

vessel per trip. NMFS is taking this action earlier than originally anticipated (and earlier than last year's similar action) given that relatively little of the quotas have been harvested so far this year and given updated information about aggregated LCS and hammerhead shark landings last year. Last year, the retention limit was increased to 36 LCS other than sandbar sharks per vessel per trip on July 18, 2018 (83 FR 33870) and increased to 45 LCS other than sandbar sharks per vessel per trip on November 7, 2018 (83 FR 55638). Even with both of the retention limit increases, the aggregated LCS landings only reached 55 percent of the annual quota, while the hammerhead shark landings reached 46 percent of the annual quota. Given the low aggregated LCS landings this year to date, NMFS anticipates the fishing season could be similar to last year, and thus believes that increasing the retention limit earlier could assist with the available quota being fully utilized. Without this early increase, fishermen in the Atlantic region may not have an opportunity to fully utilize the quotas in the region for the remainder of the year, and available quota will be underutilized.

Accordingly, as of [*insert date of publication with the Office of the Federal Register*], NMFS is increasing the retention limit for the commercial aggregated LCS and hammerhead shark management groups in the Atlantic region for directed shark limited access permit holders from 3 LCS other than sandbar sharks per vessel per trip to 36 LCS other than sandbar sharks per vessel per trip. This retention limit adjustment does not apply to directed shark limited access permit holders if the vessel is properly permitted to operate as a charter vessel or headboat for HMS and is engaged in a for-hire trip, in which case the recreational retention limits for sharks and "no sale" provisions apply (§ 635.22(a) and (c)); or if the vessel possesses a valid shark research permit under § 635.32 and a NMFS-approved observer is onboard, in which case the

restrictions noted on the shark research permit apply.

All other retention limits and shark fisheries in the Atlantic region remain unchanged. This retention limit will remain at 36 LCS other than sandbar sharks per vessel per trip for the remainder of the 2019 fishing season, or until NMFS announces via a notice in the **Federal Register** another adjustment to the retention limit or a fishery closure, if warranted.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

Prior notice is impracticable because the regulatory criteria for inseason retention limit adjustments are intended to allow the agency to respond quickly to existing management considerations, including remaining available shark quotas, estimated dates for the fishery closures, the regional variations in the shark fisheries, and equitable fishing opportunities. Additionally, regulations implementing Amendment 6 of the 2006 Atlantic Consolidated HMS FMP (80 FR 50074, August 18, 2015) intended that the LCS retention limit could be adjusted quickly throughout the fishing season to provide management flexibility for the shark fisheries and provide equitable fishing opportunities to fishermen throughout the regions. Based on available shark quotas and informed by shark landings in previous seasons, responsive adjustment to the LCS commercial retention limit from the incidental level is warranted as quickly as possible to allow fishermen to take advantage of available quotas while sharks are present in their region. For such adjustment to be practicable, it must occur in a timeframe that allows fishermen to take advantage of it.

Adjustment of the LCS fisheries retention limit in the Atlantic region will begin on *[insert date of publication with the Office of the Federal Register]*. Analysis of available data shows that adjustment of the LCS commercial retention limit upward to 36 would result in minimal risks of exceeding the aggregated LCS and hammerhead shark quotas in the Atlantic region based on our consideration of previous years' data. With quota available and with no measurable impacts to the stocks expected, it would be contrary to the public interest to require vessels to wait to harvest the sharks otherwise allowable through this action. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. Adjustment of the LCS commercial retention limit in the Atlantic region is effective *[insert date of publication with the Office of the Federal Register]*, to minimize any unnecessary disruption in fishing patterns, to allow the impacted fishermen to benefit from the adjustment, and to not preclude fishing opportunities by fishermen farther north as the sharks are likely going to be in the northern areas of the region for only a short period of time before migrating south again. Foregoing opportunities to harvest the respective quotas could have negative social and economic impacts for U.S. fishermen that depend upon catching the available quotas. Therefore, the AA finds there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.24(a)(2) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 20, 2019.

Jennifer M. Wallace,

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National Marine Fisheries Service.

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